

United States District Court
Eastern District of California

Eddie Dunbar,

Petitioner,

2:04-cv-1176-GEB-PAN-P

vs.

Order

A. K. Scribner, et al.,

Respondents.

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On August 16, 2005, the court dismissed petitioner's application for a writ of habeas corpus and the Clerk of the Court entered judgment. On October 13, 2005, petitioner filed a request for additional time to file a notice of appeal.

A timely notice of appeal is a jurisdictional prerequisite to appealing a judgment of the district court. Fed. R. App. P. 4(a); Browder v. Director, Dep't of Corrections, 434 U.S. 257, 264 (1978). Ordinarily, a party in a civil case must file the notice within 30 days after judgment is entered. Fed. R.

1 App. P. 4(a). If a party files a motion pursuant to Fed. R. Civ.
2 P. 60 within ten days of the entry of judgment, time to file a
3 notice of appeal runs from entry of the order disposing of the
4 motion. Fed. R. App. P. 4(a)(4)(A)(vi). The district court may
5 extend time if a party so moves within 30 days of the time the
6 notice must be filed and the party shows either excusable neglect
7 or good cause. Fed. R. App. P. 4(a)(5).

8 A court may find excusable neglect upon a showing a party
9 failed timely to file because of careless omission to act. See
10 Pincay v. Andrews, 351 F.3d 947, 950 (9th Cir. 2003). A party
11 who seeks an extension within 30 days after time to appeal
12 expired cannot satisfy this standard. See State of Oregon v.
13 Champion International Corp., 680 F.2d 1300, 1301 (per curiam)
14 (noting the good cause language was added to the rule because the
15 excusable neglect standard does not fit the situation in which an
16 appellant seeks an extension before the expiration of the initial
17 appeal period); see also Fed. R. App. P. 4(a)(5) advisory
18 committee note.

19 Since judgment was entered August 16, 2005, and no party
20 filed a motion pursuant to Fed. R. Civ. P. 60, petitioner had
21 until September 15, 2005, to file a notice of appeal and until
22 October 15, 2005, to move for an extension of time to file a
23 notice of appeal.

24 Petitioner's October 13, 2005, request is timely.

25 Petitioner asserts he could not timely appeal because he
26 underwent lumbar surgery at the beginning of August and was

1 placed in the California State Prison Corcoran Acute Care
2 Hospital. He did not receive the August 16, 2005, order until
3 September 13, 2005.

4 I find petitioner has shown good cause.

5 Accordingly, petitioner's October 13, 2005, request is
6 granted.

7 So ordered.

8 Dated: November 22, 2005

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10 /s/ Garland E. Burrell, Jr.
11 GARLAND E. BURRELL, JR.
12 United States District Judge
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